

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Nicole Francine ROUQUET et al.  
Title: CALCIUM PHOSPHATE CERAMICS AND  
PARTICLES FOR IN VIVO AND IN VITRO  
TRANSFECTION  
Appl. No.: 10/540,854  
Filing Date: 09/01/2006  
Examiner: Catherine S. Hibbert  
Art Unit: 1636  
Confirmation Number: 2346

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed October 29, 2008, Applicants hereby provisionally elect Group 1 for examination, with traverse.

Applicants elect the species of claim 12, with traverse. Claims 1 – 9 are generic to the elected species.

Applicants traverse the restriction requirement by distinctly and specifically pointing out the following errors. The Office asserts that "the common technical feature common to Groups I - II is a calcium phosphate ceramic or powder." Office Action, page 2. The Office cited Okazaki et al., Biomaterials 22 (2001) 2459-2464 ("Okazaki") as disclosing a calcium

phosphate ceramic or powder and concludes that Okazaki anticipates the common technical feature.

The Office erred in mischaracterizing the technical feature common to Groups I - II. The technical feature common to Groups I - II is "the particles obtained by the method of claim 1". These particles result from the claim 1 "method for attaching DNA in plasmid form to the surface of calcium phosphate ceramic or powder". The Office erred in failing to indicate where Okazaki discloses particles resulting from a "method for attaching DNA in plasmid form to the surface of calcium phosphate ceramic or powder". Because of these distinct and specific errors, the restriction requirement is improper and should be withdrawn.

Applicants traverse the election of species requirement by distinctly and specifically pointing out the following errors. The Office erred in failing to set forth any applicable legal standard to which the facts were applied. The Office then merely identifies the difference between the species ("The species are independent or distinct because they are methods of materially different design using cultured cells in monolayers versus cultured tissue fragments, versus in vivo cells in a tissue or organ."). In doing so, the Office essentially stated that "the species are independent or distinct because they are different." This is not a proper basis for requiring an election of species under any relevant legal standard. Because of these distinct and specific errors, the election of species requirement is improper and should be withdrawn.

Accordingly, Applicants consider the election of species to be provisional and for search purposes only, such that the examination would be extended to other species upon allowability.

Applicants respectfully await examination on the merits.

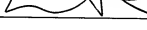
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance prosecution.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 24-APR-2009

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 295-4059  
Facsimile: (202) 672-5399

By 

Rouget F. Henschel  
Attorney for Applicant  
Registration No. 39,221